

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS,)	
)	
Plaintiff,)	C.A. No.: 04-1350 (GMS)
)	
v.)	
)	
SYLVIA FOSTER, LANCE SAPERS,)	
DAVE MOFFITT, R. GRAY,)	
MR. JOHNSON, JOHN JOE,)	
)	
Defendants.)	

**DEFENDANT DR. SYLVIA FOSTER'S RESPONSE TO PLAINTIFF'S
AMENDED MOTION FOR ORDER OF DECLARATION FOR THE DEFENDANT
DR. SYLVIA FOSTER'S CONTEMPT OF COURT ORDERS PURSUANT TO RULE 37**

COME NOW, Defendant, Dr. Sylvia Foster, by and through her undersigned counsel and responds to Plaintiff's Amended Motion for Order of Declaration for the Defendant Dr. Sylvia Foster's Contempt of Court Orders Pursuant to Rule 37, and in support thereof, avers the following:

1. Plaintiff, Jimmie Lewis, filed the present Motion, once again, contending Defendant, Dr. Sylvia Foster, has failed to adhere to the various discovery requests which have previously been filed and attempted to depose the Plaintiff on December 18, 2006. Additionally, he contends co-defendants' counsel, Deputy Attorney General Gregory Smith, was "indifferent toward the plaintiff's plight, as well as a total disregard towards the Honorable Courts procedures and/or orders." Finally, he contends the firm of Reger Rizzo Kavulich & Darnall has exercised "judicial strategy designed to prevent the responsible party from being factually identified by the Plaintiff."

2. The Order signed by the Honorable Judge Sleet of September 27, 2006

specifically reads, “Defendants shall respond to interrogatories and request for admission *properly filed* by Plaintiff within the discovery period . . .” [emphasis added] Defendant, Dr. Sylvia Foster’s position continues to be the previous requests referenced in Plaintiff’s most recent Motion for Order Compelling Discovery and the present Motion were not “properly filed”. Therefore, Defendant contends a response to such requests is not warranted pursuant to the Court’s Order of September 27, 2006.

3. The arguments in opposition to this “Amended” Motion have been previously submitted to the Court under our Response to Plaintiff’s Motion for Order of Declaration for the Defendant Dr. Sylvia Foster’s Contempt of Court Orders, Pursuant to Rule 37. This response was filed with the Court on January 23, 2007 and a copy of said response is attached hereto as Exhibit “A”.

4. As indicated in the prior response, any contentions of wrongdoing by Deputy Attorney General Smith are directed to his attention and not under the responsibility of Defendant, Dr. Sylvia Foster. Therefore, no comment is warranted in regards to Paragraph #4 of Plaintiff’s Motion; with the exception to request that Plaintiff’s request for sanctions be denied.

5. Finally, the contention of a “judicial strategy” on the part of Defendant, Dr. Sylvia Foster’s, counsel is unfounded. Prior counsel, Carol Antoff, Esquire, is no longer with the firm of Reger Rizzo Kavulich & Darnall. Therefore, it was necessary on the part of the undersigned and Ronald W. Hartnett, Jr., Esquire to substitute our appearance on behalf of Dr. Foster to ensure that her position was properly represented in this case. Any insinuation on the part of the Plaintiff of “judicial strategy” on our part is false and unsupported.

Therefore, in light of the arguments submitted above and responses thereto, Defendant, Dr. Sylvia Foster, respectfully requests this Honorable Court to deny the Plaintiff’s Motion for

Order of Declaration for the Defendant Dr. Sylvia Foster's Contempt of Court Orders Pursuant to Rule 37.

RESPECTFULLY SUBMITTED,
REGER RIZZO KAVULICH & DARNALL LLP

/s/ Louis J. Rizzo, Jr.

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DATED: February 8, 2007

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SYLVIA FOSTER, LANCE SAPERS,)	
DAVE MOFFITT, R. GRAY,)	
MR. JOHNSON, JOHN JOE,)	
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Defendants.)	

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on this 8th day of February, 2007 that a true and correct copy of **DEFENDANT DR. SYLVIA FOSTER'S RESPONSE TO PLAINTIFF'S AMENDED MOTION FOR ORDER OF DECLARATION FOR THE DEFENDANT DR. SYLVIA FOSTER'S CONTEMPT OF COURT ORDERS PURSUANT TO RULE 37** has been served electronically and/or by first class mail, postage prepaid, to the following:

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Dated: February 8, 2007